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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	**CC Docket No. 96-128**
Provisions of the Telecommunications	)	
Act of 1996	)	

PAGING NETWORK, INC.'S PETITION FOR LIMITED RECONSIDERATION

PAGING NETWORK, INC.

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December 1, 1997

No. of Copies rec'd 0+11

SUMMARY

In the *Second R&O*, the Commission established a new default compensation rate in the aftermath of the *Illinois Public Telecom.* remand. Utilizing a "top down" approach that began with a presumed local coin rate of $0.35 per call, the Commission prescribed a default compensation rate of $0.284 per call for each subscriber 800 or access code call originating from a payphone. *Second R&O* at ¶ 41. However, the *Second R&O* does not address PageNet's proposal to recover the compensation amount on a per-increment of use basis, rather than as a flat rate amount per call. As a result, unless the compensation mechanism is revised, PageNet would be required to compensate PSPs 28 cents for less than 30 seconds of 800 service that itself costs less than a nickel. As Commissioner Quello noted in his Separate Statement to the *Second R&O*, the order could prescribe compensation at the expense of the widespread availability of paging services to the public.

PageNet urges the Commission to reconsider the *Second R&O*, and adopt PageNet's proposal to recover compensation on a per-increment of use basis. The 28.4 cent compensation amount wildly exceeds any reasonable level of compensation, and must be reduced to comply with the Court's remand and Section 276's mandates. Regardless of the ultimate level at which default compensation is set, however, the Commission must fix the method by which carriers will pay compensation. Flat-rate compensation unfairly penalizes short duration calls and ignores relevant differences in the costs and purposes of the various calls placed from pay telephones. Calls that last for less than 30 seconds and costs only 4 cents should not be required to pay compensation exceeding 28 cents per call. Moreover, by prescribing compensation based on the fact of a call rather than its duration, the Commission places a disproportionate burden on short duration calls to recover payphone costs.

Compensation should be assessed on a per-increment of use, based on six second increments. This is the norm in the billing of subscriber 800 calls, and it should apply to the compensation amount as well. In order to avoid excessive payments for long duration calls, and in order to minimize incentives for fraud, however, the Commission should subject compensation to a reasonable cap. Because it appears that the vast majority of calls are ten minutes or less in duration, PageNet suggests that a cap of ten minutes is appropriate.

PageNet's proposal is neither novel nor disruptive. *All other toll calls -- including subscriber 800 service from non-payphone locations, are billed on a per-increment of time basis.* Indeed, the charge for every other call placed from a payphone is calculated based upon its duration. Calculating compensation by the same method reflects one simple fact of telephone calling -- the customer pays for time, not calls. Moreover, a measured compensation amount would reflect the differences between subscriber 800 calls and access code calls -- and among individual subscriber 800 calls -- by ensuring that each call pay only for the usage that is made of the payphone's equipment. Indeed, the Commission originally proposed a usage-based compensation mechanism in the Docket 91-35 proceeding because such a recovery method had several "equitable aspects" to it. Now that per-increment of use payments appear feasible, the Commission should require compensation to be assessed in this manner.

Finally, the Commission arrives at the 28.4 cent compensation rate by relying on data that allocates costs based on the number of calls placed from payphones, regardless of their duration. For the same reasons that the compensation rate should be paid per increment of use, it also should be *calculated* on this basis. Therefore, the Commission should examine reliable data on the duration of each and every call from payphones, and order PSPs to submit this data if necessary. Once reliable data is obtained, the Commission should use it to allocate payphone costs by usage increments, not by the number of each type of call.

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Paging Network, Inc. ("PageNet"), on behalf of its operating subsidiaries, respectfully submits the following petition for reconsideration of the Federal Communications Commission's ("FCC" or "Commission") *Second Report and Order* ("*Second R&O*") released October 9, 1997, in the above-captioned proceeding.[1] As set forth below, the Commission should reconsider the method by which the default compensation amount for payphone calls is to be assessed on interexchange carriers ("IXCs") completing compensable calls. Rather than prescribing a flat-rate amount per-call, the Commission should require compensation to be paid per-increment of use (*e.g.* in 6-second increments), subject to a cap to prevent excessive compensation payments. It is manifestly unfair -- and therefore contrary to the Commission's legal responsibility to prescribed "fair compensation" -- to require PageNet and similarly situated 800 subscribers to pay over 28 cents in compensation for less

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997). A summary of the order was published in the *Federal Register* on October 30, 1997, 62 Fed. Reg. 58659.

than 30 seconds of 800 service that itself costs less than a nickel. Re-computing default compensation based upon 6-second increments of usage avoids this penalty for short duration calls, reflects the substantial differences among various compensable call types, and is consistent with the way all other toll calls are billed. Accordingly, the Commission should require compensation to be paid in 6-second increments, rather than as a flat-rated amount per call.

In addition, the flat-rated default compensation amount was adopted by the Commission using data that erroneously allocated payphone costs by the number of calls, rather than the usage of the payphone. This error contributed to the excessive compensation rate ordered by the Commission. To correct this defect in its analysis, the Commission should examine reliable data on call durations and re-examine the payphone cost data to allocate payphone costs by usage increments, rather than by the number of calls of each type.

INTRODUCTION

While, clearly, the statute requires that payphone service providers ("PSPs") receive fair compensation for each payphone-originated call, *see* 47 U.S.C. § 276(a)(1), this should neither be done in a manner which overcompensates them for the costs incurred, nor done in a manner which ignores differences among the compensable call types. In *Illinois Public Telecommunications Association v. FCC*, the Court vacated and remanded the Commission's default compensation rate precisely because the rate was not tailored to the subscriber 800 and access code calls for which the Commission ordered compensation. *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555, *clarified*, 123 F.3d 693 (D.C. Cir.

1997). The FCC's decision to set the default rate equal to the local coin rate "epitomize[d] arbitrary and capricious decisionmaking" because the record before the Commission was replete with evidence that the costs of access code and subscriber 800 calls were dissimilar to the cost of a local coin call. *Id.*, 117 F.3d at 563-64. The Court concluded that those responsible for paying compensation are entitled to a default rate that is "reasonably justified," so that they are not forced to block calls merely because the default rate is set too high. *Id.* at 564. The Court thus vacated the Commission's compensation rules and remanded the default rate for further consideration. *Id.* at 564; *Clarification Order* at 694.

In the remand phase of this proceeding, the Commission received comments from interested parties on the appropriate cost methodology to employ to determine compensation, the costs of payphone calls, and alternatives to the "carrier pays" compensation approach. As a large 800 subscriber, and therefore one of the entities ultimately responsible for the costs of payphone compensation, PageNet argued that the only truly "market based" compensation mechanism available is the "caller pays" approach, in which the person placing a subscriber 800 call is asked to deposit a specified amount to originate the call.[2/] As PageNet and others explained, it is the caller -- and only the caller -- that can effectively discipline the compensation rates charged by PSPs.[3/] By contrast, because the record demonstrated that per-call or per-subscriber blocking was unavailable, PageNet and similarly

[2/] PageNet Comments at 9-12 (August 26, 1997); PageNet Reply Comments at 7-8 (Sept. 9, 1997).

[3/] *E.g.*, PageNet Comments at 11.

situated subscriber 800 users are completely without the ability to control the costs they would incur under the Commission's "carrier pays" compensation scheme.

In the absence of a caller pays approach, PageNet argued that the Commission must set a default compensation rate that recognizes not only that there are significant cost differences between compensable calls, on the one hand, and the local coin rate, on the other, but also that there are significant differences *among* the compensable call types themselves.[4] PageNet argued that it would be error to treat all subscriber 800 and access code calls identically when in fact the call types bear no relation to one another in terms of their costs, duration, purpose or market value.[5] Accordingly, PageNet urged the Commission to adopt a default compensation amount that is expressed in specified time increments (with a six-second increment most appropriate), rather than as a flat rate per subscriber 800 or access code call.[6]

In the *Second R&O*, the Commission established a new default compensation rate in response to the *Illinois Public Telecom.* remand. Utilizing a "top down" approach that began with a presumed local coin rate of $0.35 per call, the Commission concluded that there is a cost difference of 6.6 cents/call between local coin calls and a subscriber 800/access code call. *Second R&O* at ¶ 41. Accordingly, it prescribed a default compensation rate of $0.284 per call for each subscriber 800 or access code call originating from a payphone. *Id.*

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[4] PageNet Reply Comments at 12-16.

[5] *Id.* at 12-13. Indeed, PageNet demonstrated that significant differences in these factors would occur even among the multiple uses of 800 services. *Id.* at 13.

[6] *Id.* at 16.

Although the *Second R&O* noted PageNet's argument in the summary of the comments section (¶ 73), the order contains no discussion of the per-increment compensation proposal and it is neither accepted nor explicitly rejected by the Commission. Commissioner Quello expressed concern, however, that a flat-rate per-call compensation amount may cause paging carriers and other 800 users to bear a disproportionate share of payphone costs. *Separate Statement of Commissioner James Quello* at 1.

I. THE COMMISSION SHOULD ADOPT A DEFAULT COMPENSATION RATE THAT IS EXPRESSED IN MEASURED INCREMENTS OF USE, SUBJECT TO A CAP

PageNet believes the $0.284 default compensation rate is excessive, and should be lowered substantially to reflect the PSPs' true costs for originating subscriber 800 and access code calls.[7/] Separate from the question of what the appropriate level of compensation should be, however, PageNet submits that the Commission must consider the method by which carriers will pay that compensation. A flat-rate approach to compensation implicitly assumes that both subscriber 800 and access code calls have the same cost and market characteristics, and also assumes that the duration of each call is irrelevant for compensation purposes. As shown below, however, such assumptions are unfounded, and flat-rate compensation for all compensable calls regardless of call type or duration is unfair and contrary to Section 276. Therefore, PageNet proposes that the Commission re-compute the default compensation amount (whether it is the $0.284 amount ordered in the *Second R&O* or

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[7/] Several parties already have petitioned the Court of Appeals to review the level of the default compensation ordered by the Commission. *See, e.g., MCI v. FCC*, D.C. Cir. No. 97-1675 (filed Nov. 7, 1997); *Sprint Corporation v. FCC*, D.C. Cir. No. 97-1685 (filed Nov. 13, 1997).

a lesser amount adopted after consideration of other petitions for reconsideration) so that it is expressed in increments of time of use, preferably in six-second increments. *This is the way that all other toll calls are billed today*. Payphone compensation should be no different. The measured rate compensation amount should be subject to a cap (PageNet suggests ten minutes) to ensure that longer duration calls do not pay excessive compensation amounts and to combat potential payphone fraud.

A. Flat-Rate Compensation is Unfair and May Exacerbate Subscriber Demands for Blocking

The methodology employed in the *Second R&O* implicitly assumes that all subscriber 800 and access code calls are sufficiently similar to have the same costs and/or market rate characteristics and thus should be priced the same. However, these assumptions are proven wrong by the record in this proceeding. Application of a single flat-rated compensation amount to these disparate types of calls violates the statutory mandate that compensation be "fair."

Flat-rate compensation will lead to excessive compensation for short duration calls. For example, PageNet receives tens of millions of inbound 800 service messages each month. Its average hold time on these calls is less than 30 seconds per call.[8/] Assuming the industry average rate of $0.08 per minute (billed in six-second increments), PageNet and similarly situated paging carriers would pay approximately $0.04 per 800 call they receive. However, if the Commission-prescribed compensation rate is passed on to the 800

[8/] *See* PageNet Reply Comments at 13. PageNet believes that many other paging companies have similar average lengths of calls.

subscriber, the cost for each payphone call skyrockets to $0.324, over 800 percent higher than the cost of the underlying service itself. It makes little sense -- and offends common notions of fairness -- to suggest that PageNet must pay over 28 cents in compensation in order to receive less than 30 seconds of 800 service costing less than a nickel. Yet that is precisely the effect of the flat-rated compensation plan adopted in the *Second R&O*.

Another example illustrates the disproportionate burden short duration calls bear under the *Second R&O's* flat-rated compensation plan. Assume two individuals place calls from two payphones located side-by-side. One caller places a single call to an access code number, lasting five minutes. The second caller places ten calls to PageNet subscriber 800 numbers, each averaging just under 30 seconds. Both payphones are in use exactly the same amount of time, and in both instances the payphone owner receives no payment from the caller for use of the phone. However, the first caller's use of the phone incurs a compensation obligation of $0.284, while the second caller's identically timed use of the phone incurs a compensation obligation of $2.84. This result penalizes callers that make short duration calls and requires them to contribute a significantly greater proportion of the PSP's costs than a caller that uses the phone for the same amount of time but on a single call.

The Commission has a statutory obligation to ensure that a PSP is "fairly compensated" for payphone-originated calls. "Fair" compensation must be measured by more than just whether it enriches PSPs. The statutory mandate of fairness requires the Commission to consider not only the PSPs' costs, but also whether the compensation amount is fair to those parties that ultimately will be required to bear the compensation and whether compensation is allocated among payors fairly. Flat-rated compensation of 28 cents per call fails to satisfy the statutory requirement of fairness. As shown above, it is not fair to require that an 800 service call costing approximately four cents pay "compensation" eight times that amount because the call originated from a payphone. It also is not fair to allocate multiple compensation charges -- and therefore a greater proportion of compensation -- to persons receiving multiple short duration calls when a longer call is charged only a single compensation amount, even though it can use the payphone equipment as much as, or longer than, several short duration calls.

In fact, it was in response to equitable concerns such as this that the Commission originally proposed a measured compensation system in its Docket 91-35 compensation plan. In response to TOCSIA's requirement that the Commission "consider" compensation for dial around calls from payphones, the Commission proposed several alternative compensation mechanisms, the first of which would have compensated PSPs based upon the "number of calling minutes generated by access code calls from . . . public payphones."[9/] The Commission noted that the minutes of use proposal had "certain equitable aspects," chief among them being that, "By specifying a per minute charge rather than a per call charge, the plan would require OSPs to pay only for the time that an access code call actually utilizes payphone equipment."[10/]

[9/] *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Notice of Proposed Rulemaking, 6 FCC Rcd 1448, 1450 (1991). ("Docket 91-35 *NPRM*").

[10/] *Id.*

Ultimately, the Commission abandoned the idea of per minute compensation out of a concern that tracking of the calls would be too difficult.[11] Importantly, however, the Commission reached this conclusion at a time when carriers had not developed the ability to track payphone originated calls on a per-call basis.[12] By contrast, in the current proceeding, the Commission already has assigned to IXCs the responsibility to track payphone calls, and has ordered payphones to send payphone-specific coding digits in order to facilitate such tracking. Thus, carriers already are responsible for identifying compensable calls, and should now have systems in place that will perform such tracking. The only additional information that would be necessary to administer compensation on a measured basis is information on the duration of a compensable call. Because carriers charge end users for each call on a timed basis, this information already exists in the carrier's system. PageNet is not aware of any substantial technical or administrative difficulties that would arise from associating this call duration information with the call record kept for compensation purposes. Therefore, a measured rate compensation mechanism should be feasible to implement promptly.[13]

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[11] *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736, 4747 (1991).

[12] *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Second Report and Order, 7 FCC Rcd 3251, 3253 (1992) (concluding that per call compensation is not feasible).

[13] Because the Commission has rejected the most direct approach for recovering payphone compensation -- caller pays -- some administrative expenses are inevitable. The administrative difficulties of associating call duration information with compensable call records does not appear substantially different than the call tracking obligations already imposed on IXCs.

Furthermore, it is unfair to prescribe flat-rate compensation for all compensable calls without regard to the *revenues* generated by the types of calls subject to compensation. For example, a typical 800 paging customer may pay approximately $25 per month for paging service. Assuming the subscriber received 60 pages per month, the paging provider received a little more than 41 cents per page that is transmitted to the subscriber. Compensation of 28 cents per page is grossly disproportionate compared to this small amount of revenues. Similarly, viewed from the IXC's perspective, flat-rate compensation makes little sense. As even the LEC Coalition admitted, compensation should reflect differences in the amount of revenue that 800 calls generate. The LEC Coalition, in supporting AT&T's argument that it may be appropriate to prescribe a lower rate for 800 subscriber code calls than 800 access code calls, explained that "it is one thing to require a carrier to pay a dollar or more for calls that, like access code calls, generate an average $2.16 in revenues. It is quite another to impose a $1.00 charge on subscriber 800 calls which, according to AT&T, on average generate less than $0.50 in revenues each."[14/] Though the LEC Coalition's proposed $1 compensation rate far exceeds what anyone would determine is reasonable compensation, the point remains. A compensation amount that is fair in relation to calls for which a carrier receives over $2 in revenue cannot also be fair in relation to a call for which the revenues are less than one-quarter of that amount.

At a flat-rate compensation amount, subscribers with short duration calls are much more likely to seek to block payphone calls to avoid paying a disproportionate share of

[14/] RBOC Coalition Comments at 25-26. The LEC Coalition relied on AT&T 1995 800 subscriber data, which was adjusted downward in 1996.

payphone costs. Such a result would run counter to the Commission's goal of encouraging the universal availability of all telecommunications services. The widespread deployment of pay telephones does little to serve the public interest if potential recipients are forced to block payphone calls because the compensation is too high. Moreover, as Commissioner Quello emphasized in his separate statement in the *Second R&O*, payphone compensation should not have the effect of diminishing the availability of paging services to the public. *Quello Statement* at 1. Therefore, the *Second R&O* should be reconsidered to avoid an outcome where flat-rate compensation plan has the effect of *reducing* the number of compensable calls originating from payphones.

Finally, PageNet submits that the measured rate proposal it advocates is consistent with Section 276's mandate to ensure fair compensation for each and every payphone originated call. Although Section 276 directs the Commission to adopt a "per-call" compensation plan, that directive does not mandate that the compensation *rate* be expressed as a flat rated amount.[15] By mandating a "per-call" compensation plan, Congress meant to bar the Commission from continuing the flat-rated "per-phone" compensation plan then in place under Docket 91-35.[16] That is, the Commission was not free to continue to require the same compensation amount per-phone, regardless of the number of calls placed from the

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[15] Section 276 requires the Commission to "establish a per call compensation plan to ensure that all [PSPs] are fairly compensated for each and every completed . . . call using their payphone . . .." 47 U.S.C. § 276(b)(1)(A).

[16] In Docket 91-35, the Commission prescribed a per-phone compensation plan for independent PSPs in the amount of $6 per phone per month, regardless of the actual number of calls placed from the phone. The Commission acknowledged in that order that per-call compensation was preferable, but concluded that it was not technically possible to implement a per-call approach at that time.

phone, nor was it free to continue to require IXCs to pay a fixed share of compensation regardless of the number of compensable calls they handled. Instead, the Commission was required to move to a compensation plan pursuant to which a PSP receives greater compensation for calls from his payphone as the call volume increases. While per-call compensation requires that each completed call incur some compensation obligation, it does not mandate that every call incur the *same* compensation obligation. Because a measured rate ensures that each call pays some compensation, it is a permissible "per-call" compensation plan under Section 276.

B. A Measured Compensation Rate Takes Into Account Differences Between Subscriber 800 And Access Code Calls

Just as it is inappropriate to equate access code and subscriber 800 compensation to the local coin rate because the costs of a local coin call are dissimilar, the Commission may not treat all access code and subscriber 800 calls similarly when the record reflects there are substantial differences among such calls. There are dispositive cost differences, as well as market differences, both between access code and subscriber 800 calls as well as among subscriber 800 calls. A measured compensation rate would more accurately take these differences into account, because each call would incur a compensation obligation more commensurate with the use of the payphone.

In the first instance, the Commission must recognize that access code and subscriber 800 calling are two different services, with different usage and cost characteristics. Access code calls provide a caller with the ability to direct calls to any terminating telephone number and to bill for that call in a number of ways (e.g., calling card account, collect, thirdnumber, etc.). Access code calls typically are billed on an increment of use basis, but with an up-front call setup charge that varies according to the type of billing provided.

Subscriber 800 service, on the other hand, provides the caller the ability to reach a particular person or entity, without charge to the caller. The terminating location on an 800 call is chosen by the 800 subscriber, who agrees in advance to pay the communications costs of the call (and typically receives a bulk discount over 1+ calling). 800 service is billed purely on an increment of use basis, with six-second billing the norm. Moreover, 800 numbers are used by subscribers for a vast array of purposes, created substantial differences even within the subscriber 800 category of calls. The services provided by the underlying subscriber determines the average call length each subscriber will experience. As a result, the duration of the different types of subscriber 800 calls will coincide only by fortuity.

The record indicates that, in general, subscriber 800 calls tend to be shorter in duration than are access code calls. PageNet, for example, is among the largest users of 800 services in the country, assigning 800 numbers to its paging and voicemail subscribers for access to their accounts and to originate pages or other communications. Its average holding time, for the tens of millions of messages it completes for customers each month, is under 30 seconds.[17] While PageNet's use appears to be shorter than other uses of 800 services, the record indicates that other subscriber 800 calls average approximately three minutes per call.[18] Even the independent payphone industry's primary trade association, the American Public Communications Council ("APCC") recognizes that "[800] [s]ubscriber . . . calls in

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[17] PageNet Reply Comments at 13.

[18] *Id.*

general tend to be of shorter duration than other long distance calls."[19] While APCC does not indicate how much shorter these calls are (and does not report call durations as part of its study of independent payphone SMDR records), its objection to an exemption for calls of less than one minute indicates that there are a significant number of such subscriber 800 calls.[20]

Access code calls are still longer, on average. Access code calls involve greater call set-up activities, as a caller must choose a billing option and the IXC must verify the billing information supplied. While data on average call duration is sketchy, at best, PageNet believes that access code calls average approximately 5-7 minutes per call.

If the Commission adopts a measured compensation rate, then each call will pay compensation that more appropriately reflects the usage characteristics of the call. Moreover, a measured compensation rate is more reflective of the fact that both subscriber 800 and access code calls are billed according to a usage component, with the total charge varying by the duration of the call. By placing the compensation amount in the usage component, it avoids altering the billing characteristics of a subscriber 800 call, where billing is based solely on the duration of the call.

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[19] APCC 1996 Reply Comments at 28, CC Docket No. 96-128 (July 15, 1996).

[20] *Id.* (Compensating payphone providers only for calls in excess of one minute duration "would have a dramatic effect on the number of compensable [800] subscriber . . . calls").

C. A Measured Compensation Rate More Accurately Reflects the Way Toll Calls are Billed

The fact that there are vastly different usage characteristics for each type of calling, and thus no appropriate average that fairly represents all of payphone calls, is clearly reflected in the pricing of payphone-originated calls. Although PSPs have contended in this proceeding that their costs are fixed, and have advocated common recovery across all calls, regardless of type or duration, the fact is that customers pay for payphone calls based upon the amount of time they are using the phone. In the end, PSPs are selling *time* on the phone, not calls.

This clearly is the case with subscriber 800 calls. Subscribers to 800 services pay on an increment-of-time basis, not per call. PageNet is not aware of any instance in an 800 context where a five minute call would be billed at the same amount as a one minute call.

Indeed, the charge for every call placed from a payphone depends upon the actual amount of time the phone is used. Other than subscriber 800 and dial around calls, there are three principal types of calls originating from payphones: 0+ calls, 1+ sent-paid calls, and local coin calls. 0+ calls are billed by the presubscribed carrier based upon the duration of the call.[21/] Longer 0+ calls pay more than do short duration calls. Similarly, sent-paid toll calls (*i.e.,* long distance calls dialed on a 1+ basis) are billed on a measured basis. After an initial deposit covering a pre-set period of calling time, 1+ callers are required to

[21/] While a call setup charge also is imposed, this charge reflects the live and automated operator time required to collect and validate billing information from the caller.

deposit additional coins for each minute of use thereafter.[22] The same is true for local as well, where the trend prior to the Commission's deregulation had been for the coin deposit to cover only an initial period of time. The duration of this period, and the amount of the deposit required, is principally dictated by the limitations of coin collection -- which require minimum increments of a nickel, and are not capable of giving change -- not by a decision that such calls should be flat-rated. In any event, with local coin rates deregulated, PSPs are free to vary the amount of time that the initial coin deposit covers, and some have indicated that they will take greater advantage of their ability to charge local coin calls on a measured basis.[23]

If the Commission calculates its compensation amount this way, it will more accurately reflect the way these other calls are billed. Indeed, as the Commission noted in the Docket 91-35 NPRM, increment of use billing is more equitable because such a compensation mechanism "would require [compensating carriers] to pay only for the time that [a compensable call] actually utilizes payphone equipment."[24]

D. Default Compensation Should Be Subject to A Cap to Avoid Penalizing Calls of Longer Durations

Just as flat-rate compensation is unreasonable when applied to calls of short durations, so may a measured compensation rate impose excessive charges on long calls. The current

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[22] The initial period typically is set to a period long enough to minimize the interruption of calls while they are in progress.

[23] *See, e.g.*, 25 Cent Call Goes Way of 5-Cent Cigar," Fort Lauderdale Sun Sentinel, at 1A (Oct. 7, 1997).

[24] *Docket 91-35 NPRM*, 6 FCC Rcd at 1450.

$0.284 compensation rate represents an *average* compensation amount, due to the Commission's use of the number of calls, regardless of their duration. As a result, if the rate were modified to be expressed on a measured basis, calls of very long durations would pay an excessive charge. If no cap is imposed, long calls could far exceed even the 41 cents per call that independent PSPs claimed they should recover for compensable calls. Further, an open-ended measured compensation amount presents a significant risk of fraud, as PSPs might be encouraged to place lengthy calls to 800 numbers in order to increase compensation. In order to avoid this, the Commission should place a cap on the compensation amount for longer duration calls.

PageNet recommends that the Commission set an upper bound to the measured compensation rate. The vast majority of calls appear to be 10 minutes or less in duration. Thus, if the cap were placed at ten minutes, most calls would be compensated based upon their actual use of the telephone, while longer calls would be protected from paying excessive rates. Use of a ten minute cap also would help minimize incentives for PSPs to fraudulently increase the number of compensation due to their payphones. Without a cap, a PSP could increase compensation simply by dialing an 800 number when the phone is not otherwise in use, and allowing the receiver to hang unattended off the hook for extended periods of time. As a result, what otherwise had been down time will be used to increase compensation to the PSP. Meanwhile, no legitimate calls will be lost, since the unattended phone could be returned to the receiver by a caller before placing a call. With a cap, however, long calls would not be as profitable for a PSP, and its incentive to increase compensation through fraud would be reduced.

II. THE COMMISSION SHOULD ALLOCATE PAYPHONE COSTS ON AN INCREMENT OF USE BASIS RATHER THAN THE SECOND R&O'S FLAWED ALLOCATION BASED ON THE NUMBER OF CALLS WITHOUT RESPECT TO THE DIFFERENCES BETWEEN THE TYPES OF CALLS

The cost studies submitted in the record are faulty because the costs associated with payphones are inappropriately allocated among the number of calls, rather than being allocated based upon usage (*i.e.* the number of minutes of each call or, alternatively, the average number of minutes for each call type). The data demonstrates that subscriber 800 calls, and paging calls in particular, are shorter in duration than most other calls, whether 0+ or access code calls. Thus, use of the number of calls tends to bias the cost calculations higher in the context of subscriber 800 calls than is actually the case.

PageNet believes that, because PSPs are in essence selling time rather than calls, it is appropriate to examine payphone costs based on the amount of time that the payphone is in use. The differences in call types, particularly with respect to the duration of the calls, should be accounted for when dividing the costs among payphone services. A call which keeps a payphone in use for ten minutes should bear a greater portion of the payphone's overall cost than should a call of one minute in duration. The longer duration call uses a payphone instrument more than does the shorter duration call, and also precludes other uses of the phone during that time. By contrast, after the one-minute caller hangs up, another caller is free to use to phone for other purposes.

Currently, however, the cost data is not broken out by duration of call, whether on an actual or average basis. The Commission should seek such data in the record and, order PSPs to submit it if necessary. The Commission should use that data to calculate the costs incurred by a PSP in originating access code and subscriber 800 calls based on the duration of the call, not whether a call was placed.

CONCLUSION

For the foregoing reasons, PageNet respectfully requests that the Commission reconsider its *Second Report and Order*. The Commission should adopt a compensation amount which apportions the payphone compensation obligation on per-increment basis, rather than per-call basis, subject to a cap to avoid overpayment on exceptionally long calls. In addition, the Commission should obtain reliable data on the duration of calls originating from payphones, and re-calculate the cost of subscriber 800 and access code calls based on the minutes of use instead of on a flat per-call basis.

Respectfully submitted,

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December 1, 1997